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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/502,306	02/07/2005	Timo Kalevi Korpela	Navalot skaga	8674

7590 11/28/2006
Dodds & Associates
1707 North Street NW
Washington, DC 20036

EXAMINER

GUDIBANDE, SATYANARAYAN R

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/502,306	Applicant(s) KORPELA ET AL.	
	Examiner Satyanarayana R. Gudibande	Art Unit 1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 7-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 7-18, drawn to a pentarphin molecule consisting of a structure of SEQ ID NO: 4, a drug composition **comprising** of pentarphin SEQ ID NO: 4 and a method to increase the activity and/or concentration of macrophages and/or T-lymphocytes in a mammal body administering to a patient a therapeutically active amount of a drug composition comprising of pentarphin sequence SEQ ID NO: 4 in a linear or a cyclic form.

Group II, claim(s) 19 and 20, drawn to a cell cultivation medium comprising pentarphins having a linear or cyclic structure.

According to PCT Rule 13.2, unity of invention exists only when the shared or corresponding technical feature is a contribution over the prior art. The inventions listed as Groups I-II do not relate to a single general inventive concept because they lack the same or corresponding special technical feature. The technical feature of Group I is pentarphin molecule or a drug composition comprising of SEQ ID NO: 4. The special technical feature of a deca peptide NH₂-SLTCL**VKGFY**-COOH comprising the SEQ ID NO: 4 has been disclosed by Zav'yalov, et al., Immunology letters, 1996, 49, 21-26 and hence does not make a contribution over the prior art. Moreover, the group II does not require the SEQ ID NO: 4 as a special technical feature for the cell culture medium.

Art Unit: 1654

Therefore, inventions listed as groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Election of Species

This application contains claims directed to the following patentably distinct species: pentarphin molecule and composition **comprising** pentarphin sequence SEQ ID NO: 4. The species are independent or distinct because the pentarphin molecule can be any peptide consisting of SEQ ID NO: 4 and the drug composition **comprising** pentarphin sequence SEQ ID NO: 4 can again be any peptide molecule.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species of the peptide with a SEQ ID NO identifying the peptide sequence for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 7, 8, 11 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable

Art Unit: 1654

thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Claims 9 and 12 are generic to the following disclosed patentably distinct species: antibiotic molecules. The species are independent or distinct because the antibiotics are structurally distinct compounds. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species of antibiotic, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).


Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Satyanarayana R. Gudibande whose telephone number is 571-272-8146. The examiner can normally be reached on M-F 8-4.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1654

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


ANISH GUPTA
PRIMARY EXAMINER


Satyanarayana R. Gudibande, Ph.D.
Art Unit 1654